

ORRICK, HERRINGTON & SUTCLIFFE LLP

DOUGLAS H. MEAL (*admitted pro hac vice*)

dmeal@orrick.com

REBECCA HARLOW (CA BAR NO. 281931)

rharlow@orrick.com

MATTHEW D. LABRIE (*admitted pro hac vice*)

mlabrie@orrick.com

The Orrick Building

405 Howard Street

San Francisco, CA 94105-2669

Telephone: +1 415 773 5700

Facsimile: +1 415 773 5759

Attorneys for Defendant

ZOOSK, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JUAN FLORES-MENDEZ, an individual and
TRACY GREENAMYER, an individual, and
on behalf of classes of similarly situated
individuals,

Plaintiffs,

v.

ZOOSK, INC., a Delaware corporation,

Defendant.

Case No. 3:20-cv-4929-WHA

**DECLARATION OF DOUGLAS H.
MEAL IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Date: Thursday September 15, 2022

Time: 8:00 a.m.

Judge: Hon. William H. Alsup

Trial Date: October 17, 2022

Date Action Filed: July 22, 2020

1 I, Douglas H. Meal, declare:

2 1. I am a member of the Bar of the Commonwealth of Massachusetts and am admitted
3 *pro hac vice* in the above-captioned action as counsel for Defendant, Zoosk, Inc. (“Zoosk”). I make
4 this declaration in support of Defendant’s Motion for Summary Judgment. I make this declaration
5 based on my own personal knowledge and/or my examination of records that are kept by my firm
6 in the regular course of business. If called to testify as a witness to these matters, I could do so
7 competently.

8 2. Plaintiffs Juan Flores-Mendez and Amber Collins initiated this action on July 20,
9 2020, asserting four causes of action against Zoosk and its ultimate parent in Germany Spark
10 Networks SE (“Spark”) for negligence, declaratory judgment, violation of the California Consumer
11 Privacy Act, Cal. Civ. Code § 1798.150 (“CCPA”), and violation of the California Unfair
12 Competition Law, Cal. Business & Professions Code § 17200 *et seq.* (“UCL”). ECF No. 1.

13 3. After Zoosk and Spark moved to dismiss, Plaintiffs filed a First Amended Complaint
14 rather than oppose the motion. ECF No. 46. Zoosk again moved to dismiss, and the Court granted
15 in part and denied in part Zoosk’s motion, dismissing the UCL claim and denying as moot the
16 motion as to the CCPA claim, which Plaintiffs had agreed to dismiss with prejudice. ECF No. 61.¹

17 4. Zoosk answered the First Amended Complaint and asserted various affirmative
18 defenses. ECF No. 67.

19 5. Plaintiffs then filed a Second Amended Complaint, retaining the negligence claim
20 and attempting to replead the UCL claim that had been dismissed. ECF No. 77. Zoosk moved to
21 dismiss the re-pleaded UCL claim, which the Court granted. ECF No. 93.

22 6. Plaintiffs tried again with the Third Amended Complaint, which was then replaced
23 by a Fourth Amended Complaint that changed out Plaintiff Collins – then incarcerated on drug-
24 related offenses – for Plaintiff Greenamyre. ECF Nos. 142, 191. Zoosk answered the Fourth
25 Amended Complaint, asserting many of the same affirmative defenses that had appeared in its

26 ¹ The Court held Spark’s motion to dismiss on jurisdictional grounds in abeyance pending
27 discovery, while ruling on Zoosk’s motion. *See* ECF No. 61 at 8. Plaintiffs subsequently
28 voluntarily dismissed Spark. ECF No. 75.

1 answer to the First Amended Complaint. ECF No. 197.

2 7. Plaintiff Greenamyre moved for certification of several classes with her as sole class
3 representative because of adequacy concerns regarding Plaintiff Flores-Mendez. ECF No. 200. On
4 July 27, 2022, the Court denied the motion because Plaintiff Greenamyre had agreed to an
5 enforceable class action waiver in Zoosk's Terms of Use. ECF No. 234.

6 8. Plaintiff Greenamyre never produced an email notice of the Intrusion from Zoosk in
7 response to Defendant's Requests for Production, Set One or otherwise.

8 9. Attached hereto as **Exhibit A** is a true and correct copy of excerpts of the Deposition
9 Transcript of Plaintiff Juan Flores-Mendez dated January 20, 2022.

10 10. Attached hereto as **Exhibit B** is a true and correct copy of excerpts of the Deposition
11 Transcript of Plaintiff Tracy Greenamyre dated May 25, 2022.

12 11. Attached hereto as **Exhibit C** is a true and correct copy of screen shots of a PayPal
13 transaction receipt that Plaintiff Flores-Mendez produced bearing Bates number FLORES-
14 MENDEZ000013 and that was marked as Exhibit 18 at his deposition.

15 12. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff Greenamyre's
16 receipt from Apple dated October 4, 2015, for the purchase of a subscription to Zoosk for \$29.99
17 that Plaintiff Greenamyre produced bearing Bates number GREENAMYER000001 and that was
18 marked as Exhibit 36 at her deposition. Greenamyre produced no documentation for any of the
19 ongoing or subsequent subscription payments she claims to have made to Zoosk.

20 13. Attached hereto as **Exhibit E** is a true and correct copy of Defendant's forensic
21 expert Mahmoud El Halabi of Stroz Freidberg's report dated June 1, 2022.

22 14. Attached hereto as **Exhibit F** is a true and correct copy of screen shots of an email
23 from Zoosk to Plaintiff Flores-Mendez with the subject "Notice of Data Security Event" dated June
24 6, 2020 that Plaintiff Flores-Mendez produced bearing Bates numbers FLORES-
25 MENDEZ000014-FLORES-MENDEZ000023 and that was marked as Exhibit 22 at his
26 deposition.

27 15. Attached hereto as **Exhibit G** is a true and correct copy of Defendant's expert
28

1 Mahmoud El Halabi of Stroz Freidberg's supplemental report dated August 10, 2022.

2 16. Attached hereto as **Exhibit H** is a true and correct copy of the messages between
3 Plaintiff Greenamyre and Zoosk Customer Support dated May 25, 2021, that Plaintiff Greenamyre
4 produced bearing Bates numbers GREENAMYER000004–GREENAMYER000005 and that was
5 marked as Exhibit 37 at her deposition.

6 17. Attached hereto as **Exhibit I** is a true and correct copy of excerpts of Plaintiff Tracy
7 Greenamyre's Verified Responses to Zoosk's Special Interrogatories, Set One, dated May 11, 2022.

8 18. Attached hereto as **Exhibit J** is a true and correct copy of the Declaration of
9 Matthew Strebe in Support of Plaintiffs' Motion for Class Certification dated April 28, 2022, served
10 on Zoosk on April 29, 2022.

11 19. Attached hereto as **Exhibit K** is a true and correct copy of the Expert Rebuttal
12 Report of Matthew Strebe dated June 8, 2022.

13 20. Attached hereto as **Exhibit L** is a true and correct copy of excerpts of the Deposition
14 Transcript of Matthew Strebe dated June 22, 2022.

15 21. Attached hereto as **Exhibit M** is a true and correct copy of the Expert Report of
16 Gary D. Olsen dated April 29, 2022.

17 22. Attached hereto as **Exhibit N** is a true and correct copy of excerpts of the Deposition
18 Transcript of Gary D. Olsen dated June 20, 2022.

19 23. Attached hereto as **Exhibit O** is a true and correct copy of Plaintiff Juan Flores-
20 Mendez's Fourth Supplemental Responses to Zoosk's Special Interrogatories, Set One, dated
21 March 11, 2022.

22 24. Attached hereto as **Exhibit P** is a true and correct copy of Plaintiffs' Second
23 Amended Initial Disclosures Pursuant to Fed. Civ. R. Proc. 26(a)(1)(A).

24 25. Attached hereto as **Exhibit Q** is a true and correct copy of the Declaration of Conor
25 Callahan in Support of Defendant's Motion for Summary Judgment dated August 9, 2022.

26 26. Attached hereto as **Exhibit R** is a true and correct copy of the Declaration of
27 Constantin Garcev in Support of Defendant's Motion for Summary Judgment dated August 10,
28

1 2022.

2 27. Attached hereto as **Exhibit S** is a true and correct copy of the Declaration of James
3 Grant Kessler in Support of Defendant's Motion for Summary Judgment dated August 10, 2022.

4
5 I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th
6 day of August 2022, at Boston, Massachusetts.

7 /s/ Douglas H. Meal

8 DOUGLAS H. MEAL